To speak in detail, it has often seemed that Professor Gray asked a good deal of teachers of the subject, if he intended his books to be used by others, (as no doubt he did), when he introduced such cases as *Rice* v. *Boston & W. R. Corp.*, 12 Allen 141, without even a hint that there is not another decision, English or American, agreeing with it. It has seemed that if he designed to arouse the student to alertness by giving him an occasional jolt, he might take notice that the knowledge of teachers is not encyclopedic and give us a hint; for if we too go wrong there is no one to set us right. But Kales goes farther than Gray by including the same case with notes to other cases that the student might take to support it, if he did not read them; and few students in the present strenuous law courses find much time to read beyond the daily assignment; indeed the teacher who reads all the cases cited by Professor Kales in these notes will require more time than most of us have. Moreover, the conflict, if noticed in reading the cases cited, simply challenges the reader to further search to find which is right.

Again, one may perhaps think the student might be better employed than in reading the English cases on whether a gift to the "survivors" of the share of one dying without issue enabled the representatives of one of the class dying with issue at an earlier date to participate; since the rule of the American courts that such expressions are not divesting provisions but provisions to avoid lapse, prevents the question arising here. Yet Professor Kales has thought it worth while to follow Professor Gray in this respect.

As to the advantage of using late American decisions as the basis of instruction, it seems that, while the student is thereby disabused of his notion that the matter is archaic, they are not as good as the leading cases for class discussion, by reason of the fact that these late cases usually are reported at much greater length than the old, requiring more space and reading, and often reciting the very matter in detail which we would prefer to save for class-room discussion prejudiced by endorsement or condemnation by the court, or knowledge of how other courts have regarded it.

Already fault has been found with Professor Kales's work beyond its deserts. On the whole it is very commendable. The publishers announce that an abridged edition will soon appear, intended to cover the same matter in less space; and perhaps that will seem better adapted to our use.

JOHN R. ROOD.

THE PUBLIC DEFENDER, A NECESSARY FACTOR IN THE ADMINISTRATION OF JUSTICE, by Mayer C. Goldman, New York: G. P. Putnam's Sons, 1917; pp. 96.

After a casual reading of this argument, one rather favors a publicly paid defender for poverty-stricken unfortunates accused of crime. After a study of it, one suspects that its author is a bit of a cynic; that he knows the art of politics to be in creating opinion not by reason but by appeal to the subconscious and irrational emotions, and is aware that irrefutable logic attractively enough phrased may successfully screen an unsupportable premise.

Mr. Goldman demonstrates his conclusions well, but he assumes premises which the average practicing lawyer will not concede.

It is the practice throughout the union to give every person accused of crime an opportunity to be represented and advised by an attorney. If an accused person is unable to hire counsel for himself, an attorney is appointed to defend him free of charge. The appointee is in some jurisdictions expected to render his service without any compensation, and in others is paid by the state. Mr. Goldman's proposition is to substitute a permanently appointed public defender for these individual assignments. His presentation of the proposition is forceful and clever, but he supports the premises from which the desired conclusion undeniably follows only by irrefutable statement of conditions quite unconnected with the argument. It is a powerful picture of existing evil, that, "The defendant of financial means—is released on bail, pending trial. The indigent accused—perhaps a foreigner—often ignorant—generally helpless—languishes in jail, utterly incapable of coping with the great forces of the state arrayed against him". It is undeniable, as Mr. Goldman says, that wealthy malefactors sometimes quibble their way to acquittal by the scandalously dilatory and unscrupulous brilliance of venal lawyers, while the poor man suffers prompt conviction. And it is true, perhaps, that an unskillfully advised defendant may be unjustly convicted as the result of the prejudiced "impetuosity" and "improprieties" of a prosecuting attorney. All this is immensely effective in pointing the need of a change of some sort, but has it really aught to do with the office of public defender? Shall he quibble the poor man to unjust liberty as hired brilliance does for the wealthy one; or can he provide bail for the indigent languishing in jail? Will he be more potent to expedite trial of an unbailed unfortunate or more skillful in countering the prejudice of the official prosecutor? These questions Mr. Goldman quite neglects to answer. Judged by the reviewer's own empirical knowledge, there is little probability that a public defender would even be ready for trial as promptly as individually assigned counsel, and his superior ability in general is most debatable. If the office of public defender would "reduce the number of manufactured defenses" and would "decrease the expense" of the system of assigned counsel, and would "improve the criminal courts" and would effect various other reforms as Mr. Goldman asseverates, its undeniable desirability follows as logically as result does cause. But would it do all this? There is no evidence offered but the proponent's own assertions. The reviewer's experience leads to a contrary belief; his only knowledge of fact is that it would materially *increase* the expense of the present system of state paid assignments. In one county, populous enough to have four common pleas judges in residence, in which every person arraigned is asked if he wishes counsel, paid by the state, assigned to him, the total sum paid to assigned counsel in the last year was $140 less than the salary of the prosecuting attorney, without considering his several assistants.

What Mr. Goldman asserts may be quite correct, but while it is unsupported except by suspiciously obvious appeal to irrational sentiment the book must be condemned as wholly unconvincing. JOHN B. WAITE.